IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3740 of 1999

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
RAMBHAI RAIMALBHAI VIRDA & 5 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
MS YAMINI J DESAI for Defendant(s) : 1,
MR PRASHANT MANKAD for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.
DELETED for Defendant(s) : 4, 6,
MR PV NANAVATI for Defendant(s) : 5,
MR VIBHUTI NANAVATI for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 21/08/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 1st January 1999 passed by the Motor Accident Claims Tribunal (Auxi), Junagadh in Claim Case No.438/89, whereby the Tribunal has awarded a sum of Rs.74400/-along with interest at the rate of 12% per annum.

2. The main contention raised in this appeal is that on the date of the contract of insurance the insured vehicle was not covered by any permit to ply for carrying of passengers for hire or reward. It is submitted that the claimants were traveling in a goods vehicle which was not meant to carry

passengers.

3. The aforesaid issue is by now squarely covered by the decision of the Apex Court in the case of ***"Mallawwa and Others Vs. Oriental Insurance Co. Ltd. And Others"*** reported in 1999 ACJ 1 wherein the Apex Court has observed as under,

> "For the purposes of section 95; ordinarily a vehicle could have been regarded as a vehicle in which passengers are carried if the vehicle was of that class. Keeping in mind the classification of vehicles, by the Act, the requirement of registration with particulars including the class to which it belonged, the requirement of obtaining a permit for using the vehicle for different purposes and compulsory coverage of insurance risk, it would not be proper to consider a goods vehicle as a passenger vehicle on the basis of a single use of use on some stray occasions of that vehicle for carrying passengers for hire or reward. For the purpose of construing a provision like proviso (ii) to Section 95(1)(b), the correct test to determine whether a passenger was carried for hire or reward, would be whether there has been a systematic carrying of passengers. Only if the vehicle is so used then that vehicle can be said to be a vehicle in which passengers are carried for hire or reward. The High Courts have expressed divergent views on the question whether a passenger can be said to have been carried for hire or reward when he travels in goods vehicle either on payment of fare or along with his goods. It is not necessary to refer to those decisions which were cited at the Bar as we find that all the relevant aspects were not taken into consideration while expressing one view or the other. We may only refer to the decision of the Orissa High Curt in ***New India Assurance Co. Ltd. Vs. Kachan Bewa,*** 1994 ACJ 138 (Orissa), where Hansaria, J., speaking for the Full Bench observed as under,

"**18.** The aforesaid is not enough to take any view as to whether goods vehicle can or cannot come within the fold of proviso(ii) with which we are concerned. Our primary reason for differing, with respect, with the Rajasthan Full bench is that allowing goods vehicle to be taken within the fold of proviso(ii) would introduce uncertainties in law as that would depend upon various factors to which we shall advert; the result would be that the law would cease to be certain which it has to be at least in a case of the present nature. We have said so because reference to the definition of goods vehicle show that the first part of it doest not deal with carrying of passengers. It is the second part which speaks about the same and that too when the vehicle is used for such a purpose. The word 'use' has been defined in *Chambers English Dictionary* in its intransitive sense to mean 'to be accustomed' (to, used chiefly in the past tense)', 'to be in the habit of so doing', 'to resort'. Reference to the meaning of this word, as given in *Black's Law Dictionary*, 5th Edition, would show that even one user may amount to 'use' or it may be that for a thing being said to be 'used', it has be to be 'employed habitually'.

19. Being concerned with a beneficial legislation like the one at hand, we would have normally preferred liberal interpretation, but the question is whether, without any extra premium having been paid, the owner of a goods vehicle can claim indemnification form insurer just because once in a year the goods vehicle had carried a passenger for hire or reward along with the goods. This would perhaps robe the third proviso dealing with coverage of contractual liability lame...

22. Thus, to find out whether an insurer would be liable to indemnify an owner of a goods vehicle in a case of the present nature, the mere fact that the passenger was carried for hire or reward would not be enough; it shall have to be found out as to whether he was the owner of the goods, or an employee of such an owner, and then whether there were more

> than six persons in all in the goods vehicle and whether the goods vehicle was being habitually used to carry passengers. The position would thus become very uncertain and would vary from case to case. Production of such result would not be conducive to the advancement of the object sought to be achieved by requiring a compulsory insurance policy.
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> **23.** There is another aspect of the matter which had led us to differ from the Full Bench decision of Rajasthan High Court. The same is what finds place in sub-section (2) of section 95. that sub-section specifies the limits of liability and clause (a) deals with goods vehicle; and in so far as the person traveling in goods vehicle is concerned, it has confined the liability to the employees only. This is an indicator, and almost a sure indicator, of the fact that legislature did not have in mind carrying of either the hirer of the vehicle3 or his employee in the goods vehicle, otherwise, clause(a) would have provided a limit of liability regarding such persons also."

4. In the case on hand, the goods vehicle was used for travel which was not meant to carry passengers. Therefore, the Tribunal has committed an error in holding that the appellant is liable to satisfy the claim.

5. In the premises aforesaid, the judgement and award of the Tribunal qua the appellant is quashed and set aside. If the amount deposited by the appellant is lying in the Fixed Deposit, the same shall be refunded to the appellant, in which case it will be open to the original claimant to recover the said

amount from the owner of the vehicle. However, if the amount has already been disbursed then the same will not be recovered from the claimant and it will be open to the Insurance Company to recover the same from the owner of the vehicle in question. Appeal is allowed to the aforesaid extent. No order as to costs.

[K.S. JHAVERI, J.]

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